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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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DOCKET NO. T-00000A-97-0238

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE TELECOMMUNICATIONS
ACT OF 1996.

PROCEDURAL ORDER**BY THE COMMISSION:**

At the request of U S WEST Communications, Inc. ("U S WEST") and the Commission's Utilities Division Staff ("Staff"), a procedural conference was held on August 27, 1999, at which the following parties appeared or participated telephonically: U S WEST, Staff, AT&T Communications of the Mountain States, Inc., Teleport Communications Group, Inc. and TCG-Phoenix (collectively "AT&T"); MCI WorldCom, Inc. ("MCIW"); Cox Arizona Telcom, Inc. ("Cox"); e-spire™ Communications, Inc. ("e-spire™"); Sprint Communications Company, L.P. ("Sprint"); Electric Lightwave, Inc. ("ELI"); NEXTLINK Arizona, Inc. ("NEXTLINK"); Rhythms Links, Inc. ("Rhythms"); and the Residential Utility Consumer Office ("RUCO").

According to U S WEST, U S WEST and Staff jointly proposed that all checklist items, public interest, Track A and Section 272 issues be presented before the Commission in one proceeding, and that OSS proceed through the workshop process on a separate track. U S WEST indicated that certain checklist items have OSS implications. U S WEST proposed that the non-OSS items, and the non-OSS portion of those checklist items that have OSS implications, should proceed to hearing. U S WEST requested that the Commission approve U S WEST's application regarding checklist items contingent upon the resolution of OSS issues.

U S WEST proposed that Staff and intervenors file testimony on non-OSS issues by October 8, 1999; U S WEST file rebuttal testimony by November 19, 1999; Staff and intervenors file surrebuttal by December 1, 1999; and the hearing commence on December 7, 1999. U S WEST also proposed that if the non-OSS items are not bifurcated, the matter should still proceed according to the same schedule.

1 It is appropriate to allow the parties to properly consider U S WEST's proposal and prepare a
2 response.

3 IT IS THEREFORE ORDERED that Staff and the intervenors shall file a response to the
4 following questions with their preliminary position statements, due on September 7, 1999:

- 5 1. Should non-OSS issues be bifurcated from OSS issues and proceed on a
6 separate track? If so, why? If not, why not?
- 7 2. If non-OSS issues are bifurcated,
- 8 (a) What issues should be included in the non-OSS proceeding?
- 9 (b) What schedule would you consider to be a reasonable schedule for the non-
10 OSS proceeding?

11 IT IS FURTHER ORDERED that U S WEST and Staff shall each file a reply to the responses
12 to the above questions by 4:00 p.m. on September 9, 1999.

13 IT IS FURTHER ORDERED that a procedural conference regarding the bifurcation request
14 of U S WEST and Staff shall be held at 11:00 a.m. on September 13, 1999, at the Commission's
15 offices in Phoenix, Arizona.

16 IT IS FURTHER ORDERED that the letter of Daniel Waggoner to Timothy Berg, dated
17 August 25, 1999, shall be Attachment 1, and the letter of Timothy Berg to Daniel Waggoner, dated
18 August 26, 1999, shall be Attachment 2, and the listing of checklist items faxed to the parties the
19 morning of August 27, 1999, shall be Attachment 3 to this Procedural Order.

20 DATED this 27th day of August, 1999.

21
22
23 
JERRY L. RUDIBAUGH
CHIEF HEARING OFFICER

24 Copies of the foregoing mailed/delivered
25 this 27th day of August, 1999, to:

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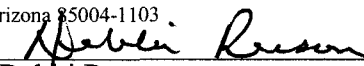
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By: 
Debbi Person
Secretary to Jerry L. Rudibaugh

Checklist Item 1: Interconnection

FCC does not discuss OSS issues in relation to this checklist item.

Issues discussed in FCC orders:

- Collocation intervals
- Forms of collocation offered
- Trunk provisioning intervals
- Trunk blocking

Checklist Item 2: Access to Unbundled Network Elements

The FCC has defined access to OSS as a UNE.

FCC has discussed OSS issues in the context of Checklist Item 2 (access to UNEs).

FCC order also address methods for CLECs to combine elements.

Checklist Item 3: Poles, Ducts and Conduits

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 4: Unbundled Loops

FCC has held that to meet this checklist item, BOC must meet OSS requirements. However, the FCC has not discussed OSS issues in context of this checklist item (OSS discussions are in context of Checklist Item 2). Some of the issues it has discussed are:

- Loop provisioning intervals
- Coordinated cutovers

Checklist Item 5: Unbundled Transport

FCC has held that to meet this checklist item, BOC must meet OSS requirements. However, the FCC has not discussed OSS issues in context of this checklist item (OSS discussions are in context of Checklist Item 2). Some of the issues it has discussed are:

- Shared transport offerings

“We conclude that, but for deficiencies in its OSS functions described above [in Checklist Item 2 discussion], BellSouth demonstrates that it provides unbundled local transport as required in section 271.” FCC BellSouth Louisiana II 271 Order, para. 202.

Checklist Item 6: Unbundled Switching

FCC has held that to meet this checklist item, BOC must meet OSS requirements. However, the FCC has not discussed OSS issues in context of this checklist item (OSS discussions are in context of Checklist Item 2). Some of the issues it has discussed are:

- Features offerings
- Custom routing
- Provision of usage information for access charges
- Usage information for reciprocal compensation

Checklist Item 7(i): 911

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 7(ii) and (iii): Directory Assistance/Operator Services

FCC has not discussed OSS in relation to this checklist item. Some of the issues discussed are:

- Evidence of non-discrimination
- Rebranding
- Separate trunk groups
- Directory listings of independent companies

Checklist Item 8: White Pages Directory Listings

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 9: Numbering Administration

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 10: Databases and Associated Signaling

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 11: Unbundled Switching

FCC has held that to meet this checklist item, BOC must meet OSS requirements. However, the FCC has not discussed OSS issues in context of this checklist item (OSS discussions are in context of Checklist Item 2). Some of the issues it has discussed are:

- INP offerings
- Coordinated cutovers

Checklist Item 12: Dialing Parity

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 13: Reciprocal Compensation

FCC has not discussed OSS in relation to this checklist item.

In its Louisiana II Order, the FCC determined that BellSouth met this checklist item, even though it held that BellSouth did not meet OSS requirements.

Checklist Item 14: Resale

FCC has held that to meet this checklist item, BOC must meet OSS requirements. However, the FCC has not discussed OSS issues in context of this checklist item (OSS discussions are in context of Checklist Item 2). Some of the issues it has discussed are:

- Services offered for resale
- Resale of Contract Service Arrangements

“We conclude that, but for deficiencies in its OSS systems described above [in Checklist Item 2 discussion], BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3).” FCC BellSouth Louisiana II 271 Order, para. 309.

ATTACHMENT 2

LAWYERS



Davis Wright Tremaine LLP

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August 25, 1999

Mr. Timothy Berg
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85016

Re: U S WEST 271 Application

Dear Tim:

I am writing on behalf of NEXTLINK Arizona Inc., ELI, e.spire Communications, AT&T Communications of the Mountain States, Rhythms Links Inc. and MCI Worldcom in response to your proposal to bifurcate the hearing schedule in this proceeding between "non-OSS" and "OSS" issues; set a new hearing schedule; and change the previously arranged procedures for filing testimony. We have a number of questions and concerns with your proposal. We would appreciate a written response to this letter prior to Friday's discussion of your proposal.

First, we question why your proposal was not made as a motion with an adequate explanation and an opportunity for parties to respond. As you know, there has been much discussion of scheduling and hearings in this case and the prior rulings rejected bifurcation as unnecessary and wasteful of resources. We believe you should have filed a motion or otherwise explained both what you seek and why circumstances have changed sufficiently to justify your proposed relief.

Second, your proposal is both vague and unworkable in seeking to divide "OSS" and "non-OSS" issues. As your prior pleadings have argued, access to OSS is an essential part of access to UNEs, resale, and many other items. For example, it is impossible to disaggregate consideration of the adequacy of U S WEST's OSS from non-discriminatory access to loops or LNP on a coordinated basis. Moreover, it makes little sense to conduct a hearing in December that may be completed significantly before OSS testing is complete and a hearing is held on OSS issues. U S WEST's compliance with many of the checklist requirements depends upon its OSS

Mr. Timothy Berg
August 25, 1999
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compliance. Also, holding a hearing on other issues so far in advance of an OSS hearing creates a risk that the Commission will be forced to make a recommendation to the FCC based upon a stale record. Further, we assume review of performance measures would be considered along with OSS. Therefore, we strongly object to any attempt to split up consideration of such issues and believe it will waste resources and confuse the record. In any event, please explain on a detailed basis how "OSS" and "non-OSS" issues would be bifurcated.

Third, we do not understand why your proposal is more efficient and will lead to more rapid consideration of your application, particularly for parties with fewer resources that are spread across many states. Bifurcation simply means parties will duplicate testimony preparation, travel and spend more resources on two sets of testimony, two sets of hearings and more discovery. In fact, we think that splitting up the schedule will extend the entire process rather than expediting it.

Fourth, we request that you confirm that U S WEST's case is complete at this time. For instance, U S WEST just recently filed a substantially revised SGAT in a parallel proceeding in Nebraska (including, for instance, many new proposals on combinations of UNEs) as well as both revised and new performance measures. Prior to any new schedule being instituted here, these new proposals should be filed and considered. Moreover, we note that the FCC currently has scheduled action for mid-September on the remand of UNE definitions from the U S Supreme Court. All parties, including U S WEST, will require at least a few weeks to analyze and develop positions on the new rules. That should happen before any testimony is filed in Arizona. (We note the 8th Circuit is also considering this Fall the merits of TELRIC pricing and reinstitution of other FCC rules on access to interconnection and UNEs). U S WEST also has recently issued new versions of IMA and will issue a further release in October.

In short, we believe your proposal is premature and undefined. We do not see why it advances anyone's interests and think it will simply use up the resources of some parties in an extended process based on incomplete information. In any event, we suggest the proposal at least be better defined before it is considered by the parties and the Commission.

Please reply to us as soon as possible so we can be prepared to discuss these issues on Friday. Thank you.

Sincerely yours,

Davis Wright Tremaine LLP

Daniel Waggoner
Daniel Waggoner *M. Scamario*

DW/ms

cc: Parties

Administrative Law Judge

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August 26, 1999

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DAVIS WRIGHT TREMAINE LLP
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Re: U S WEST 271 Application

Dear Mr. Waggoner:

I am writing in response to your letter of August 25, 1999 in this matter. Your demand that U S WEST provide a written response to your letter is unusual, especially in light of Chief Hearing Officer Rudibaugh's request that we settle procedural issues, when possible, through telephonic conference as opposed to written pleadings. However, as a professional courtesy, U S WEST will articulate some of the reasons that it proposed a bifurcated schedule. As you know, the Commission Staff has joined with U S WEST in seeking this schedule.

U S WEST and the Staff jointly propose that all checklist items, public interest, Track A and Section 272 issues be presented before the Commission in one proceeding and allow OSS to proceed through the workshop process on a separate track. You respond that prior proposals for bifurcation were rejected "as unnecessary and wasteful." You fail to cite to any order containing such a ruling, which is unfortunate because U S WEST is not aware of any such order. As you note, both U S WEST and the Staff have previously proposed bifurcation of non-OSS issues in this case. The issues surrounding the bifurcation proposals have been fully briefed, and all parties have had the opportunity to express their opinions on the subject. To our knowledge, there has not yet been a ruling on the bifurcation requests. A schedule has been set for workshops on the OSS portions of the case, but there has not been any decision regarding how the remaining issues will be handled.

U S WEST strongly disagrees with your statement that bifurcation is unworkable. While OSS overlays onto several checklist items, OSS is a separate and unique requirement that does not affect the non-OSS aspects of those checklist items. Instead, the processes and procedures that U S WEST has in place to make checklist items available are wholly independent of OSS. The non-OSS issues can and should be decided now, and the Commission can approve U S WEST's application on all checklist items contingent on the resolution of OSS issues.

FENNEMORE CRAIG

Daniel M. Waggoner, Esq.
August 26, 1999
Page 2

The proceedings in other states demonstrate that bifurcation is not only feasible, but preferable. Numerous commissions have found that the most efficient and reasonable procedure is to decide the myriad of non-OSS issues involved in 271 cases, contingent on resolution of OSS issues. For example, the New York, California and Texas Commissions have approved 271 applications contingent on the results of OSS testing. Likewise, the Nebraska Commission is proceeding to resolve all checklist items before a resolution of Checklist Item 2, which includes OSS. In none of those states was a hearing on other issues put off pending the results of OSS testing, as you suggest. Such a procedure would needlessly result in a final decision months after the conclusion of testing, which is already scheduled for next year. Such a delay is unacceptable and contrary to the expressed desires of the Commission, which has expressed interest in getting this matter tried before year-end.

A bifurcated approach also makes sense for both Arizona consumers and the Hearing Division. Arizonans benefit because the sooner U S WEST obtains Section 271 approval, the sooner they will receive the promised benefits of the Telecommunications Act. Waiting to hold the hearing until after the OSS testing is complete would clearly cause unnecessary delay. Finally, the Hearing Division has a number of large dockets that are already set or are likely to be set for early 2000, including the pending U S WEST rate case, the proposed sale of exchanges by U S WEST to Citizens, a second series of interconnection arbitrations under the Telecommunications Act and on-going hearings with respect to electric competition matters. Bifurcation therefore should make a great deal of practical sense for the Hearing Division as well.

Finally, your suggestion that delay is appropriate because there are issues involved in this docket pending before the FCC and the 8th Circuit is a request for perpetual delay. I cannot foresee a time when there would not be any significant issues involved in 271 proceedings pending before the FCC or courts. If we wait for that day, U S WEST's application never will proceed to hearing.

In conclusion, the issues you raise in your letter are without merit. The most efficient and expedient procedure to follow in this case is to bifurcate OSS issues and proceed to hearing on all other issues on December 7, 1999 as proposed by U S WEST and the Commission Staff.

Sincerely,

Timothy Berg

TB/mtg

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By: 
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